

### **REMARKS**

Applicant has carefully reviewed and considered the Office Action mailed on June 3, 2003, and the references cited therewith.

Claims 1, 4, 22 and 23 are amended, claims 13-21 are canceled; as a result, claims 1-12 and 22-28 are now pending in this application.

### **Information Disclosure Statement**

Applicant respectfully requests that a copy of the 1449 Form, listing all references that were submitted with the Information Disclosure Statement filed on March 19, 2003, marked as being considered and initialed by the Examiner, be returned with the next official communication.

### **§112 Rejection of the Claims**

Claims 1-5, 8, 10-12 and 22-28 were rejected under 35 USC § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner objected to the use of the word, "aqueous" to the first phase. Applicant has cancelled use of the word "aqueous."

Claims 1-5, 8, 10-12 and 22-28 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner objected to the use of the word, "aqueous" to the first phase. Applicant has cancelled use of the word "aqueous."

### **§103 Rejection of the Claims**

Claims 1-12 and 22-28 were rejected under 35 USC § 103(a) as being unpatentable over Esser (U.S. 6,221,345, of record) Palinczar (U.S. 4,724,139, of record), and Kasat et al. (U.S. 5,424,070, of record) in view of Bonastre Gilabert et al. (WO 2000001875, PTO-892) and Kropf et al. (WO 2000047177, PTO-892). The Gilabert et al. '1875 reference describes a fabric softener, not an antiperspirant. In addition to not being an antiperspirant, the fabric softener does not describe the phases of the present invention. The Applicant asserts that there is no

motivation to combine this '1875 reference with other references because the formulations of the references relied upon have disparate purposes. The '1875 reference is a fabric softener. The Esser patent describes the "moisturizing cream" as a mixture of cetyl alcohol, cetyl stearyl alcohol, decyl ester of Oleic acid, and glyceryl stearate. The Kasat reference describes a solid stick. There is no emulsion in the Kasat product. The Kasat product cannot be formulated to make a spray, wipe or roll on product, such as is claimed. The Palinczar reference describes waxes and a stick-type antiperspirant. The claims of the present invention are not directed to sticks and do not contain waxes. The Palinczar does not describe an emulsion, such as is claimed, nor is there reference to the stability claimed, for the stick. These ingredients are not the ingredients in the products of claims 1-13.

The '47117 application describes a use of nanoparticles in chitosanes. This reference also has no description of the specific elements claimed. The Examiner has not explained how a chitosane formulation and a fabric softener formulation suggest combination with each other and in addition, combination with a stick, a cream, and a waxy substance, and how this has anything to do with an antiperspirant formulation of the present invention.

The Applicant requests reconsideration of these grounds of rejection and withdrawal of the rejection. In addition to the lack of motivation to combine references, the Examiner does not appear to have considered the products described in claims 6, 7-12 and 22. None of the references describes the products claimed in 6, 7-12 and 22.

Further, none of the references cited by the Examiner describes a formulation having the physical and chemical properties in the present claims. The Esser patent describes the "moisturizing cream" as a mixture of cetyl alcohol, cetyl stearyl alcohol, decyl ester of Oleic acid, and glyceryl stearate. These ingredients are not the ingredients in the products of claims 1-13.

The Examiner has stated, "the physical and chemical properties of a formulation are not considered to be a limitation to a formulation or a composition since it is well settled that recitation of an inherent property of a composition or a formulation will not further limit claims drawn to a composition or a formulation." However, the Examiner has acknowledged that the formulations relied upon do NOT have the components claimed. How then can there be any "inherency." Applicant asserts that there is no inherency because the formulations in the art

cited have different components and are not used as antiperspirants. When courts interpret claims, each element, including the preamble, is given weight, in order to understand the breadth of the claim.

The Examiner states that the standard is a consideration of the references as a whole and not one-by-one. However, the standard for combining the references is that something in the references must suggest combination. The Applicant asserts that the references do not suggest combination because the Esser patent describes a creamy, aqueous emulsion. The Kasat reference describes a solid stick. There is no emulsion in the Kasat product. The Kasat product cannot be formulated to make a spray, wipe or roll on product, such as is claimed. The Examiner is using the argument that the standard is a consideration of the references as a whole to pick and choose ingredients among a collection of disparate products. However, what the Examiner is actually doing is using the present invention as a guide in order to pick ingredients from products that do not have anything in common with each other or with the present invention. The Examiner has not provided the basis used for combining the references, other than identifying elements in the references that are in the claims. With this criteria, the Examiner could probably use dirt as a reference to cover mineral aspects of the claim.

The products of Esser and Kasat appear antithetical. What support is there that combining the references cited yields a stable product, when the products in each reference are so different? The problem is exacerbated by the newly cited references for even more disparate products.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney ((612) 373-6976) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743

Respectfully submitted,

AMIT PATEL ET AL.

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Date 3 September 03

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3d day of September, 2003.

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